

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8987 of 1995

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

e judgement? No

e judgement? No

e judgement? No

e judgement? No

e judgement? No

e judgement? No

e judgement? No

e judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

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SEVALIA CEMENT EMPLOYEES UNION

Versus

STATE OF GUJARAT  
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Appearance:

MR DG CHAUHAN for Petitioners

MR KN SHASTRI FOR MR DA BAMBHANIA for Respondent No. 1  
and 2.

MR. A.D. GANDHI FOR NANAVATI ASSOCIATES for Respondent No. 3

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 21/03/96

ORAL JUDGMENT ;

1. On 19-10-95 notice was issued by this Court to the respondents as to why this Special Civil Application may not be admitted and finally disposed of at the admission stage. That order by itself is treated as Rule and the service thereof waived by Mr.Shastri and Mr. Gandhi for the respondents. The matter is accordingly taken up for final disposal.

2. There is no dispute between the parties that the petitioners Nos.2 to 7, who were all working with the respondent No.3-Company, were placed under suspension by an order dated 9-11-93 with regard to an incident dated 9-11-93 alleging that the petitioners Nos.2 to 7 gave beatings to the Security Supervisor and other members of the Security Staff. The petitioner Nos.2 to 7 were not paid even their subsistence allowance during the period of suspension after 9-11-93 and no effective inquiry proceedings were held. The Union of employees-petitioner No.1 after sending a letter dated 15-4-95 to the Assistant Labour Commissioner, Nadiad raising a grievance that no inquiry was being held and no subsistence allowance was being paid, filed the present petition before this Court on 17-10-95.

3. It is given out by Mr. Gandhi learned counsel appearing for respondent No.3-Company that a sum of Rs.1000/- is being paid to each of the suspended employees from July, 1994 against subsistence allowance and has further stated that besides this amount of Rs.1000/- P.M., which is being paid since July, 1994, the Company shall also pay a further sum of Rs.1000/- per month against arrears and this amount against the arrears shall be paid from April, 1996 beginning from the month of March, 1996 till the arrears are cleared. Mr. Gandhi has also stated that certain amount had also been paid prior to July 1994 and it has also been stated by Mr. Gandhi that so far as the inquiry proceedings are concerned, so far no inquiry proceedings whatsoever had been held while all these petitioners are suffering the suspension since November, 1993.

4. Mr. Chauhan appearing for the petitioners has stated that the amount of Rs.1000/-, which is being paid

since July, 1994, relates to a payment in terms of an Award for the period prior to their suspension and this amount is being paid as an amount due under the Award dated 16-5-92 passed by the Presiding Officer, Labour Court, Nadiad. Mr. Chauhan has invited my attention to the fact that the petitioner-Union had filed a Special Civil Application No.3889 of 1993 for the purpose of recovery of the amount due under the aforesaid Award dated 16-5-92. It was in respect of 520 employees including the present six petitioners Nos.2 to 7 under the aforesaid Award. The total amount sought to be recovered was Rs.41,89,572/- for 520 employees against the wages which had not been paid to them prior to the date of the Award i.e. 16-5-92. In Special Civil Application No.3889 of 1993 interim orders were passed on 27-10-93 and 23-6-94 by the Division Bench and the final order was passed on 14-9-94. The reading of these three orders passed by the Division Bench on 27-10-93, 23-6-94 and 14-9-94 makes it transparently clear that the amount of Rs.1000/-, which was being paid, was with reference to the past dues and the same had nothing to do with the subsistence allowance payable to the six petitioners Nos.2 to 7, who were placed under suspension on 9-11-93. However, the final order dated 14-9-94 shows that against the amount, which was sought to be recovered under the Award, a substantial sum had been disbursed to the workmen and it is also recorded that there was no dispute that if all the amounts paid during this period is applied towards payment of dues under the Award, the Award stands satisfied. It, therefore, appears that the payment of Rs.1000/- P.M., which was made from July, 1994, was started by the Company against the payment of the past dues and, therefore, if any amount by way of Rs.1000/- P.M. being paid to the present petitioners Nos.2 to 7 is found in excess of the amount, which was payable to them under the Award, the same may be open to be adjusted. If the amount, which has already been paid at the rate of Rs.1000/-P.M. uptill now, does not exceed the dues of the employees, that position may also have to be worked out because it is pointed out by Mr. Chauhan that the salary was not paid to large number of employees even beyond the period for which the Award had been passed on 16-5-92. In any case, as presently advised, Mr. Gandhi has not been able to point out anything from the record to indicate that this amount of Rs.1000/- has been paid to the suspended employees against subsistence allowance. Mr. Gandhi made an attempt to refer to the photostat copies of the Cash Vouchers and the list of the suspended employees, but none of these documents from page No.37 to 69 indicate that any payment was made against subsistence allowance. The long and short of the

matter is that on the basis of the record, as it stands, it can not be said that the Company has paid any amount to the present petitioners Nos.2 to 7 against subsistence allowance and the amount of Rs.1000/- which is being paid since July 1994 has not been paid as subsistence allowance and it is further clear that this payment, which is being made from July, 1994, is in terms of the orders passed by the Division Bench on various dates, as stated above, and that was against the past dues, as has been noted by the Division Bench itself in its order dated 23-6-94. It will be for the concerned authorities to decide as to whether the amount under the Award and the dues, if any, in respect of these petitioners Nos.2 to 7 prior to November, 1993 stand paid or not. In case the same has been paid already and any amount beyond the such dues has been paid, that may be open to be adjusted against subsistence allowance, but if after the exercise is undertaken with reference to the dues under the Award and any other dues against non payment of salary for any period prior to 9-11-93, if it is found that the due amount had not been paid, such amount shall not be open to be adjusted against the subsistence allowance.

5. In the facts and circumstances of this case, when it is the common case of the parties that since November, 1993 no effective inquiry proceedings are being held and the petitioners Nos.2 to 7 are not at all responsible for any delay in the inquiry proceedings, their entitlement to the subsistence allowance in accordance with S.10-A of the Industrial Employment (Standing Orders) Act, 1946 can not be made to be defeasible on the basis of a stand taken contrary to the record. It is clearly provided in S.10-A with regard to the payment of subsistence allowance that in case of suspension, subsistence allowance has to be paid at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension, and at the rate of seventy-five percent of such wages for the remaining period of suspension, if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman. Nothing has been pointed out in the pleadings that the delay in the inquiry is attributable to the conduct of any of the petitioners-workmen and as such it is clear that these six petitioners Nos.2 to 7, who are suffering suspension since 9-11-93, were entitled to receive subsistence allowance at the rate of fifty percent of the wages which were paid to them at the end of October, 1993 and after expiry of period of ninety days from 9-11-93 they were entitled to the payment of subsistence

allowance at the rate of seventy-five per cent of the wages, which were paid to them at the end of October 1993. However, Mr. Gandhi has submitted that the Company had been virtually closed in 1989 and it is not in a position to pay the entire due amount at a stretch and, therefore, time may be granted for making the payment of the arrears and the amount of Rs.1000/-, which will now be paid from April 1996 beginning from the month of March, 1996, may be allowed to be adjusted against the subsistence allowance.

6. Considering the cumulative effect of the entire fact situation and considering all the facts and circumstances of this case in entirety, I find that this Special Civil Application deserves to be allowed with the directions as under:

- (a) The respondent No.3-Company shall complete the inquiry proceedings within a period of six months from the date the copy of this order is served;
- (b) The respondent No.3-Company shall also work out a statement of the due subsistence allowance keeping in view the provisions of S.10-A of the Industrial Employment (Standing Orders) Act, 1946 and the entire due amount of subsistence allowance shall also be paid to the petitioners Nos.2 to 7 within a period of six months, as stated above, from the date the certified copy of this order is served upon it. While computing the due amount of subsistence allowance it will be open for the respondent No.3-Company to adjust any amount, which might have been paid to the petitioners Nos.2 to 7 in excess of the entire due amount of subsistence allowance with reference to the amount, which is being paid to them at the rate of Rs.1000/- P.M. from July, 1994 and which may now be paid from April, 1996 and any other amount, which might have been paid to them before July, 1994 and after 9-11-93, but no amount, which was otherwise payable to the petitioners Nos.2 to 7 prior to 9-11-93 shall be included in preparing this statement and for this purpose it will also be open for the petitioners Nos.2 to 7 to present their statement of dues by incorporating the details of the amount received by them against their past dues. The respondent No.3-Company shall make available the copy of this statement to the petitioner-Union and the petitioners Nos.2 to 7 and, thereafter, the statement of dues shall be finalised and

accordingly the payment shall be made.

(c) Should the respondent No.3-Company fail to complete the inquiry proceedings within the period of six months, as stated above, or fail to make the payment, as stated above, the petitioners Nos.2 to 7 shall automatically stand reinstated with the expiry of six months period, as granted in the earlier part of the order.

7. This Special Civil Application is accordingly allowed and the Rule is made absolute in the terms as aforesaid. No order as to costs.